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Nov. 26

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CONCORD, N.H.

Mr. William H. Messeck, Jr.,
State Forester
Forestry and Recreation Commission
State House Annex

Dear Sir:

Reference is made to your inquiries concerning the power and duties of Town Tree Wardens. You ask, specifically, concerning the responsibilities of these officers in connection with right-of-way clearance for public utility companies.

Town Tree Wardens are appointed under the provisions of R.L. c. 90 Pt. 23, as inserted by Laws of 1945, c. 188. Their concern is with trees in public ownership.

You will note that by Pt 23, s. 2, the trees within highway limits over which towns have control are those "which have been . . . acquired by gift or purchase, or planting by or with the advice of the tree warden, or by the condemnation by the tree warden". Succeeding sections prescribe in detail the method of acquisition and set forth the procedure to be employed in dealing with publicly owned trees. See especially section 6, concerning cutting and removal.

Special provisions are made for the cutting necessary or incidental to the erection of lines and wires on the highway. These concern both publicly and privately owned trees. R. L. c. 90, Pt. 24, s. 13 is of primary interest in this regard. I quote this section:

"13. Cutting Trees. No such licensee shall have the right to cut, mutilate or injure any shade or ornamental tree, for the purpose of erecting or maintaining poles or structures or installing wires or other attachments or appurtenances thereto, without obtaining the consent of the owner of the land on which such tree grows or the payment or tender in full of damages therefor determined as provided in this section. If the consent of such owner cannot be obtained, the selectmen, upon petition, after notice to and hearing, shall determine whether the cutting or mutilation is necessary and if

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determined to be necessary, they shall assess the damages that will be occasioned to the owner thereby."

To determine the place of the Tree Warden in this connection it is necessary to return to Pt. 23, s. 4. This section, together with the section just quoted, sets forth the duties of the Tree Warden when public utility companies desire to cut trees belonging to the Town. The pertinent part of the section last cited follows:

"... the tree warden or his authorized agent shall represent the interest of the public at any hearing whenever a public service corporation shall desire to cut or remove any shade or ornamental tree in accordance with the provision of section 13 of part 24 . . . , or may have caused damage to such trees."

Considering the context in which the above language is found, it is clear that the "interest of the public" to which reference is made is that arising from the ownership of the trees involved.

Specifically, I find no provision whereby the Tree Warden is authorized to represent the interest of individuals whose trees may be cut or trimmed by a utility company. Such person has his rights protected under Pt. 24, s. 13.

Very truly yours,

Warren E. Waters
Assistant Attorney General

WEW:RM